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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. [redacted]34.

THE JURAGUA IRON COMPANY, LIMITED, APPELLANT,

vs.

THE UNITED STATES.

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APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 8, 1907.

(20,602.)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 637.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 12, 1907.

1 In the Court of Claims of the United States.

I.—Petition.

No. 22804. Filed February 24, 1902.

THE JURAGUA IRON COMPANY, LTD.,
vs.
THE UNITED STATES.

To the Honorable the Judges of the United States Court of Claims:

The petition of the Juragua Iron Company, Ltd., respectfully shows as follows:

1. Your petitioner is a corporation duly created and existing under the laws of the State of Pennsylvania, having been incorporated thereunder on the first day of March, A. D. 1883, and having at all times since its incorporation borne true faith and allegiance to the Government of the United States, and has not in any way aided or abetted or given encouragement to rebellion against the said Government.

2. Your petitioner was duly incorporated for the purpose, among other things, of carrying on the business of purchasing land
2 containing iron ore or other minerals, or leases or other rights to mine the same, situated in the island of Cuba, and mining said ores and bringing the same to market in the United States or elsewhere and vending and selling the same, the manufacture and sale of iron and steel or any compound thereof in said island of Cuba, and the ownership of all real estate, improvements, appliances, or agencies reasonably necessary for the mining, manufacturing, bringing to market, and selling of any property or products of the said corporation, and for the purpose of vending as merchandise in said island of Cuba or elsewhere said ores or the products thereof, together with tools, machinery, and supplies of various sorts and kinds, and for the doing of any and all things necessary and convenient for the purpose of enabling it to carry on to the best advantage the businesses above specified.

3. That the principal office and place of business of the said petitioner is now and at all times since its incorporation has been in the city of Philadelphia and the State of Pennsylvania, and, in addition to such principal office and place of business, your said petitioner, at the times hereinafter mentioned and for a long time prior thereto, had maintained and was maintaining sub-offices and subsidiary places of business in the island of Cuba, and principally in the province of Santiago de Cuba, in said island, at or near the towns, places, or ports called "Siboney," "Firmeza," and "La Cruz," and at such places owned valuable real estate containing mines of iron ore and other minerals. In addition to the valuable mines of iron ore and other minerals contained in and upon the real estate so owned

and possessed by your petitioner, certain of said real estate had by petitioner been improved by the building thereon of valuable structures of a permanent character, such as dwelling-houses, with kitchens and other necessary outhouses appurtenant thereto,
3 stables, stores, offices, blacksmith shops, sand-house, and hospital, furnished with all necessary furniture and equipments for the comfortable maintenance of the officers, agents, and employés of your petitioner engaged in carrying on the business of your petitioner at or near the towns, ports, or places above named, and, in addition to such improvements and their furniture and equipments, there were also at or near such towns, ports, or places large quantities of personal property belonging to petitioner and consisting in part of machinery of various sorts and kinds, tools for mining and general purposes, household stores and supplies in the company's houses and storehouses, locomotives and cars for the transportation of ores and the products thereof, horses, mules, cattle, and swine, a telephone line, with all its necessary instruments and appurtenances, medicines, clothing, and other articles of various sorts and kinds more particularly itemized as follows:

7 Rand slugger drills, at $75	$525.00	
6 Ingersoll drills, at $75	450.00	
One Diamond drill	850.00	
Furniture, house of R. R. supt. at Siboney	200.00	
Furniture, office of R. R. supt. at Siboney	50.00	
Furniture, company office at Siboney	150.00	
Saw-mill tools	600.00	
Machine shop and tools	1,500.00	
One bolt-cutting machine, 1½	500.00	
Foundry and tools	200.00	
Lagoon bridge at Siboney, damaged	1,200.00	
Locomotive # 9, damaged	900.00	
Locomotive # 13, "	350.00	
5 ore cars, 36" gauge, at $175	875.00	
3 flat cars, 36" gauge, at $300	900.00	
Furniture, company office at La Cruz.	75.00	
4 Books and stationery	600.00	
One volante and harness	175.00	
14 prs. car wheels on axles, at $24	336.00	
		$10,436.00
66 structures at or near Siboney, including dwelling-houses, outhouses, offices, hospital, and stables, together with their contents, dismantled, burned, or razed by order of the general commanding, all of the approximate value of		23,130.00
		$33,566.00

4. Your petitioner was in actual, peaceful possession of said property and was conducting itself as an American citizen, having maintained a strict neutrality with respect to the difficulties and troubles

then existing in said island of Cuba between the insurgents and the officers, agents, and troops of His Majesty the King of Spain, and having always so conducted itself, when, on or about the 1st day of June, A. D. 1898, and on various dates subsequent thereto, the properties of your said petitioner in said island of Cuba at or near the towns, ports, or places called "Siboney," "Firmeza," and "La Cruz" were, by direction of the commanding officers of the United States Army or of that portion thereof in such vicinity, entered upon by bodies of troops in the service of the Government of the United States, and petitioner's said properties were deliberately and by way of precaution taken possession of by said troops so acting, as aforesaid, and subsequently, by the deliberate command of such officers, many of said buildings belonging to your petitioner were used by said troops or were burned or otherwise destroyed, and said valuable property was also likewise used, burned, destroyed, embargoed, taken, appropriated, or carried away, whereby this petitioner sustained great damage in the sum of thirty-three thousand five hundred and
5 sixty-six ($33,566) dollars, as will more fully appear by reference to the itemized schedule of such damages above set forth.

5. All of said loss and damage so sustained by your petitioner was sustained as the result of the deliberate action and precautions taken and exercised by said bodies of troops acting under the directions of their commanding officers, and were not the results of warlike engagements or in the course of active hostilities, and as such taking of private property for public uses without just compensation is expressly prohibited by the Constitution and laws of the United States of America, said United States has thereby become indebted to your petitioner in the full sum of the aggregate value of the properties so used, carried away, burned, or destroyed.

Wherefore petitioner claims that there is justly due to it from the United States the sum of thirty-three thousand five hundred and sixty-six ($33,566) dollars, as set forth in the aforesaid schedule of damages.

6. That no assignment or transfer of said claim or any part thereof or interest therein has ever been made, and that your petitioner is justly entitled to the amount above stated after allowing all just credits and offsets.

Wherefore your petitioner prays judgment against the United States for the sum of thirty-three thousand five hundred and sixty-six ($33,566) dollars.

THE JURAGUA IRON COMPANY, LTD.,
By JOSIAH MONROE, *Secretary and Treasurer.*

6 STATE OF PENNSYLVANIA, *City of Philadelphia, ss:*

I, Josiah Monroe, being first duly sworn, do depose and say that I am the secretary and treasurer of The Juragua Iron Company, Ltd., a corporation, which corporation is named as party plaintiff in the annexed petition; that I have read the said petition and know the

contents thereof, and the facts therein stated are true to the best of my knowledge, information, and belief.

JOSIAH MONROE.

Subscribed and sworn to before me this 21st day of February, A. D. 1902.

WILLIAM J. DICKSON,
Notary Public.

[SEAL.]

Commission expires May 12, 1905.

7 II.—*Traverse. Filed January* 9, 1907.

In the Court of Claims of the United States, December Term, A. D. 1906.

No. 22804.

THE JURAGUA IRON COMPANY, LIMITED,
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

J. A. VAN ORSDEL,
Assistant Attorney General.

8 III.—*Argument and Submission of Case.*

This cause was argued by Mr. John S. Flannery and Mr. Frederic D. McKenney for the claimant and by Mr. Felix Brannigan for defendants and submitted January 9, 1907.

9 IV.—*Findings of Fact as Amended—Conclusion of Law—and Opinion of the Court.*

THE JURAGUA IRON COMPANY (LIMITED)
v.
THE UNITED STATES.

This case, having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The Juragua Iron Company (Limited) is a corporation duly created and existing under the laws of the State of Pennsylvania,

having its principal office and place of business in the city of Philadelphia, in that State, and is now, and for many years has been, engaged in the business of mining and selling iron ore and other mineral products in the United States, Cuba, and elsewhere, and in manufacturing iron and steel products, and was so engaged at the opening of the late war with Spain. To enable it to carry on said business, it owned, leased, and operated mines situate in the island of Cuba, and maintained offices, works, and the necessary tools, machinery, equipments, and supplies for said business, in the Province of Santiago de Cuba, at or near Siboney, Firmeza, and La Cruz. In addition to its mines, works, and their equipments, it also owned real estate at or near said city of Siboney, which was improved by 66 buildings of a permanent character, used for the purposes of its business and occupied as dwellings by its employees, and for other purposes.

II.

That in the year 1898, and while the war with Spain was in progress, the lives of the United States troops who were engaged in military operations in the Province of Santiago de Cuba, in the belligerent prosecution of the war, became endangered by the prevalence of yellow fever, and it was deemed necessary by the officers in command, in order to preserve the health of the troops and to prevent the spread of the disease, to destroy all places of occupation or habitation which might contain the fever germs. On or about the 11th day of July, 1898, General Miles, commanding the United States forces in the island of Cuba, because of the necessity aforesaid and by the advice of his medical staff, issued orders to his subordinate officers to destroy by fire these 66 buildings at Siboney, in the island of Cuba, which belonged to the claimant, and had been used for the purposes aforesaid; and pursuant to said order, said buildings and their contents were destroyed by fire by the military authorities of the United States; the reasonable value of which buildings at the time and place of destruction was $23,130; and the reasonable value of the drills, furniture, tools and other personal property so destroyed by fire under the order aforesaid was seven thousand nine hundred and eighty-six dollars ($7,986), making a total of thirty-one thousand one hundred and sixteen dollars ($31,116).

Conclusion of Law.

The court finds, as a conclusion of law, that the defendants are not liable for the payment of any sum to the claimant on account of the damage aforesaid and the petition is dismissed.

Opinion.

BARNEY, J., delivered the opinion of the court:

The claimant is a corporation organized and existing under the laws of Pennsylvania, having its principal office and place of doing

business in the city of Philadelphia. This corporation is now, and for several years has been, engaged in the business of mining and selling iron ore and its products, and in manufacturing iron and steel products, and was engaged in that business during the Spanish war. In furtherance of the business, it owned, leased, and operated mines in the island of Cuba, and maintained offices and manufacturing works in Cuba during such war; and also owned, in connection with such works, 66 buildings, which had been used as dwelling houses for the use and occupation of its employees, and as storehouses, offices, etc., in connection with the business of the claimant.

While the Spanish war was in progress, and on or about July 11, 1898, General Miles, then in command of the United States forces in Cuba, by the advice of the medical staff, ordered the destruc-
11 tion by fire of the 66 houses mentioned, to prevent the spread of the yellow fever then prevalent in that vicinity, by the destruction of the fever germs which were believed to be lurking therein. At the time of the destruction of these houses, troops of the United States were stationed near them, and they were burned for the purpose of preserving the health and lives of these troops. In connection with these houses, some furniture and tools belonging to the claimant were also incidentally destroyed by said fire. Also, about the same time, other personal property of the claimant was damaged by the necessary military operations of the United States troops.

This action is brought by the claimant to recover from the defendants a judgment for damages growing out of this destruction.

The first question to be considered in the determination of this case is the status of the property destroyed—*i. e.*, whether it is to be treated as "enemy property" or the property of a citizen of the United States. The law seems to be well settled that when a citizen of one belligerent country is doing business in the other belligerent country and has built up and purchased property there which has a permanent situs, such property is subject to the same treatment as property of the enemy. At first sight this rule of law seems to be a harsh one, but when we consider that the property therein situated is a part of the assets of a country, and in a certain sense a part of the country itself, and further consider the difficulty, in stress of war, of discriminating between enemy and citizen property situated in the same country, the rule seems to be reasonable and necessary.

"A foreigner living and established within the territory of a State is, to a large extent, under its control; he can not be made to serve it personally in war, but he contributes by way of payment of ordinary taxes to its support, and his property is liable, like that of subjects, to such extraordinary subsidies as the prosecution of a war may demand. His property being thus an element of strength to the State, it may reasonably be treated as hostile by an enemy." (Hall's International Law, 5th ed., 497.)

"Property is considered to be necessarily hostile by its origin when it consists in the produce of estates owned by a neutral in belligerent territory, although he may not be resident there. Land, it is held being fixed, is necessarily associated with the permanent interests of

the State to which it belongs, and its proprietor, so far from being able to impress his own character, if it happens to be neutral, upon it or its produce, is drawn by the intimacy of his association with property which can not be moved into identification in respect of it with its national character. The produce of such property therefore is liable to capture under all circumstances in which enemy's property can be seized." (Hall's International Law, 5th ed., 504.)

The same doctrine is laid down in Halleck's International Law, volume 1, 414-415, and in Taylor's International Law, 553, and has been recognized by the Supreme Court (Thirty Hogsheads of Sugar *v.* Boyle, 9 Cranch, 191).

Assuming the property in question to be treated as "enemy property," we see no ground for the contention that the Government is liable for its destruction under the circumstances as stated; for, while the severities of war are being much ameliorated by recent treaties and international conferences, war, within certain limits, is and always will be destructive of the lives and property of the enemy.

12 Some of the circumstances under which the property of the enemy may be destroyed are stated by the same authority as follows:

"Finally, all devastation is permissible when really necessary for the preservation of the force committing it from destruction or surrender; it would even be impossible to deny to an invader the right to cut dikes of Holland to save himself from such a fate." (Hall's International Law, 5th Ed., 535; see also Taylor's International Law, 482-483.)

In the exigencies of war, the military forces of the United States were placed in a position where the lives of the soldiers were endangered by the prevalence of yellow fever, and the germs of this disease were believed to be lurking in the buildings, belonging to the claimant, near which these soldiers were necessarily encamped. The danger to health and life was imminent and seemed to call for heroic measures. It would not be contended that a belligerent would not have the right, under the most humane usages of modern warfare, to destroy the property of the enemy for the purpose of protecting its army from artillery or musket fire; and we can see no reason why it should not have the same right, if necessary for the protection of its army against the ravages of disease.

About the time of the destruction of these buildings other property belonging to the claimant was damaged as a necessary incident to the military operations of our troops. As to the want of liability of the defendants for such damage, it is hardly necessary to cite authorities, but reference is made to the above text-books at the pages as noted.

We have thus far considered this case upon the assumption that the property destroyed was "enemy property," but we believe that even if it is to be considered as the property of an American citizen, no cause of action is proven against the defendant.

That a belligerent is not liable for the necessary destruction of private property of a citizen caused by necessary military operations,

is also so well settled as hardly to need reference to authorities. This question arose in the case of Pacific Railroad *v.* United States (120 U. S., 227), and in deciding that case the court said: "The principle that, for injuries to or destruction of property in necessary military operations during the civil war, the Government is not responsible is thus considered established. Compensation has been made in several cases, it is true, but it has generally been, as stated by the President in his veto message, 'a matter of bounty rather than of strict legal right.'"

Hence, whether considering the property destroyed as "enemy property," or otherwise, we do not believe the claimant is entitled to recover, and the petition is dismissed.

BY THE COURT.

Filed January 28, 1907.

13 V.—*Judgment of the Court.*

No. 22804.

THE JURAGUA IRON COMPANY, LIMITED,
vs.
THE UNITED STATES.

At a Court of Claims held in the City of Washington on the 28th day of January, 1907, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendants and do order, adjudge and decree that the petition of the claimant, The Juragua Iron Company, be and the same is hereby dismissed.

BY THE COURT.

14 VI.—*Application for and Allowance of Appeal.*

No. 22804.

THE JURAGUA IRON COMPANY, LIMITED,
vs.
THE UNITED STATES.

Now comes the above named claimant, The Juragua Iron Company, Limited, by its attorneys of record, and from the judgment of this Court entered in the above cause on the 28th day of January, 1907 gives notice of and makes application for the allowance of an appeal to the Supreme Court of the United States.

McKENNEY & FLANNERY,
Attorneys for the Juragua Iron Company, Limited.

Filed March 4, 1907.

Ordered: That the above application for appeal be allowed as prayed for.

BY THE COURT.

March 4, 1907.

15 VII.—*Certificate.*

Court of Claims.

No. 22804.

THE JURAGUA IRON COMPANY, LIMITED,
vs.
THE UNITED STATES.

I, John Randolph, Assistant Clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of pleadings in the above-entitled cause; of the findings of fact and conclusion of law and opinion filed by the Court; of the judgment of the Court dismissing the petition; of the application for, and allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 7th day of March, 1907.

[Seal Court of Claims.]

JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

Endorsed on cover: File No. 20,602. Court of Claims. Term No. 637. The Juragua Iron Company, Limited, appellant, *vs.* The United States.. Filed March 8th, 1907. File No. 20,602.